

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
Houston DIVISION**

Southwestern Bell Telephone Company	§	
	§	
v.	§	CASE NUMBER: 09cv1548
	§	District Judge: Atlas
F Cary Fitch	§	Court Reporter(s): ERO
	§	

NOTICE OF THE FILING OF AN APPEAL

In connection with this appeal, instrument # 78, filed by F Cary Fitch, a copy of the notice of appeal, the order being appealed and the docket sheet are attached.

In regard to this appeal:

- The Court of Appeal \$455.00 filing and docketing fees have been paid or a motion for in forma pauperis has been granted.
- DKT-13 transcript ordering instructions are attached.
- The Clerk of Court will submit to the Fifth Circuit Court of Appeals a Certificate of Non-Compliance if the appellant fails to return the transcript order form.

David Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
Houston DIVISION**

Southwestern Bell Telephone Company	§	
	§	
v.	§	CASE NUMBER: 09cv1548
	§	District Judge: Atlas
	§	Court Reporter(s): ERO
F Cary Fitch	§	

TRANSCRIPT ORDER INSTRUCTIONS TO APPELLANT

Pursuant to FRAP 10(a)(1), a transcript order form must be filed within 14 days of the filing of the notice of appeal.

Please review the instructions on the attached DKT 13 Transcript Order Form. Prepare a separate DKT 13 for each reporter from whom transcripts are ordered. All transcripts from tape recorded proceedings may be ordered on one form. Specify exact dates of proceedings to be transcribed on the appropriate reporter or tape order.

If transcript is unnecessary or already on file in the Clerk's office, prepare a DKT 13 and mark the appropriate box to indicate this information.

The appellant must contact the court reporter within 14 days of the filing of the notice of appeal to arrange for the preparation of transcripts.

Court Reporting Services
P.O. Box 61010
Houston, TX 77208

Electronic Court Reporting 713-250-5404
Court Reporters 713-250-5499

US District Court
600 E Harrison Street
Brownsville, TX 78520-7114
956-548-2500

US District Court
1300 Victoria Street, Suite 1131
Laredo, TX 78040
956-790-1733

US District Court
1133 North Shoreline Blvd, Room 208
Corpus Christi, TX 78401
361-888-3142

US District Court
1701 W. Business Hwy 83, Suite 1011
McAllen, TX 78501
956-618-8065

US District Court
PO Box 2300
Galveston, TX 77553
409-766-3530

US District Court
PO Box 1638
Victoria, TX 78476
361-788-5000

**IN THE UNITED STATES DISTRICT COURT
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Southwestern Bell Telephone Company	§	
	§	
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David Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

SOUTHWESTERN BELL
TELEPHONE COMPANY D/B/A
AT&T TEXAS,

Plaintiff,

V.

F. CARY FITCH D/B/A
AFFORDABLE TELECOM

Defendant.

§ § § § § § § § § § § § § § § §

CIVIL ACTION NO. 4:09-CV-1548
(JURY)

NOTICE OF APPEAL

Notice is hereby given that F. CARY FITCH d/b/a AFFORDABLE TELECOM, Defendant in the above-named case, hereby appeals to the United States Court of Appeals for the Fifth Circuit, the final judgment by the United States District Court for the Southern District of Texas – Houston Division. The order appealed from was executed on July 29, 2011.

Dated: August 24, 2011.

Respectfully submitted,

/s/ W. Scott McCollough

W. Scott McCollough
MCCOLLOUGH|HENRY, PC
State Bar No. 13434100
1250 South Capital of Texas Highway
Building 2, Suite 235
West Lake Hills, Texas 78746
Tel: 512.888.1112
Fax: 512.692.2522

*Attorney for Defendant F. Cary Fitch
d/b/a Affordable Telecom*

NOTICE OF ELECTRONIC FILING

I do hereby certify that I have electronically submitted for filing a true and correct copy of the above and foregoing document in accordance with the Electronic Case Filing System of the U.S. District Court for the Southern District of Texas on August 24, 2011.

/s/ W. Scott McCollough

W. Scott McCollough

CERTIFICATE OF SERVICE

I do hereby certify that on August 24, 2011, a true and correct copy of this pleading was served in compliance with Rule 5 of the Federal Rules of Civil Procedure by the Notice of Electronic Filing, first class mail and/or facsimile transmission.

/s/ W. Scott McCollough

W. Scott McCollough

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

SOUTHWESTERN BELL
TELEPHONE COMPANY D/B/A
AT&T TEXAS,

Plaintiff,

V.

F. CARY FITCH D/B/A
AFFORDABLE TELECOM,

Defendant.

[illegible]

CIVIL ACTION NO. 4:09-CV-1548

FINAL JUDGMENT

Although the parties made good faith efforts to meet the Court's deadline on submission of a proposed judgment, the proposed final judgments that have been submitted do not conform with the requirements of Federal Rule of Civil Procedure 54(a). The Court will not enter a judgment with detailed findings of the nature requested. In accordance with the Memorandum and Order issued July 22, 2011 [Doc. # 69], as supplemented by the Lenhart Declaration dated July 27, 2011 [Doc. # 70], and the record in open court at the conference on July 28, 2011, it is hereby

ORDERED, ADJUDGED, AND DECREED that Final Judgment is entered in favor of Plaintiff Southwestern Bell Telephone Company d/b/a AT&T Texas and

against Defendant F. Cary Fitch d/b/a Affordable Telecom on the claims as stated in the Court's Memorandum and Order [Doc. # 69] in the amount of \$1,781,611.15. It is further

ORDERED, ADJUDGED, AND DECREED that Defendant take nothing on the remaining counterclaims as held in the Court's Memorandum and Order [Doc. # 69]. It is further


ORDERED, ADJUDGED, AND DECREED, in accordance with the parties' representations on the record in open court at the conference on July 28, 2011, that the claims on which summary judgment was denied in the Memorandum and Order [Doc. # 69] have been settled without prejudice to any party.

Taxable costs are assessed against Defendant in accordance with Federal Rule of Civil Procedure 54(d).

This Judgment shall bear interest at the statutory rate of 0.18% from date of judgment until paid.

This is a final, appealable judgment.

SIGNED at Houston, Texas, this 29th day of **July, 2011**.



Nancy F. Atlas
United States District Judge

APPEAL, CLOSED

**U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:09-cv-01548
Internal Use Only**

Southwestern Bell Telephone Company v. Fitch
Assigned to: Judge Nancy F. Atlas
Cause: 28:1331 Fed. Question: Breach of Contract

Date Filed: 05/21/2009
Date Terminated: 07/29/2011
Jury Demand: Both
Nature of Suit: 190 Contract: Other
Jurisdiction: Federal Question

Plaintiff

**Southwestern Bell Telephone
Company**
doing business as
AT&T Texas

represented by **Timothy A Whitley**
AT&T Texas
6500 West Loop South
Zone 5.5
Bellaire, TX 77401
713-567-8114
Email: tw8968@att.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Mary Ann Keeney
Graves Dougherty et al
401 Congress
Suite 2200
Austin, TX 78701
512-480-5682
Fax: 512-480-5882
Email: mkeeney@gdhm.com
ATTORNEY TO BE NOTICED

Paul Andrew Drummond
ATT Svc Inc
Legal Dept
175 E Houston St
4th Fl
San Antonio, TX 78205
210-351-5025
Fax: 210-351-3458
ATTORNEY TO BE NOTICED

Richard Douglas Yeomans
Graves Dougherty et al
401 Congress Ave
Ste 2200

Austin, TX 78701
512-480-5600
Fax: 512-480-5845
Email: ryeomans@gdhm.com
ATTORNEY TO BE NOTICED

Sunny Caroline McCarty
AT&T Texas
6500 W Loop S
Zone 5.5
Bellaire, TX 77401
713-567-8826
Email: sunny.mccarty@att.com
ATTORNEY TO BE NOTICED

V.

Defendant

F Cary Fitch
doing business as
Affordable Telecom

represented by **Allan L Potter**
Attorney at Law
PO Box 3159
Corpus Christi, TX 78463-3159
361-288-7715
Fax: 361-288-2104
Email: apotter@allanlpotter.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

W Scott McCollough
McCollough Henry PC
1250 South Capital of Texas Hwy
Bldg 2-235
West Lake Hills, TX 78746
512-888-1112
Email: wsmc@smccollough.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Counter Claimant

F Cary Fitch

represented by **Allan L Potter**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

W Scott McCollough
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Counter Defendant**Southwestern Bell Telephone Company**

represented by **Timothy A Whitley**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/21/2009	<u>1</u>	COMPLAINT against F Cary Fitch (Filing fee \$ 350 receipt number 05410000000005071562) filed by Southwestern Bell Telephone Company.(Whitley, Timothy) (Entered: 05/21/2009)
05/22/2009		Summons Issued as to F Cary Fitch, filed.(smurdock,) (Entered: 05/22/2009)
05/22/2009	<u>2</u>	ORDER for Initial Pretrial and Scheduling Conference and Order to Disclose Interested Persons. Initial Conference set for 8/24/2009 at 09:30 AM in Courtroom 9F before Judge Nancy F. Atlas.(Signed by Judge Nancy F. Atlas) Parties notified.(Itien,) (Entered: 05/22/2009)
06/04/2009	<u>3</u>	CERTIFICATE OF INTERESTED PARTIES by Southwestern Bell Telephone Company, filed.(Whitley, Timothy) (Entered: 06/04/2009)
06/18/2009	<u>4</u>	MOTION for W. Scott McCollough to Appear Pro Hac Vice by F Cary Fitch, filed. Motion Docket Date 7/8/2009. (Attachments: # <u>1</u> Exhibit Certificate of Service)(Potter, Allan) (Entered: 06/18/2009)
06/18/2009	<u>5</u>	ANSWER to <u>1</u> Complaint by F Cary Fitch, filed. (Attachments: # <u>1</u> Exhibit Certificate of Service, # <u>2</u> Proposed Order)(Potter, Allan) (Entered: 06/18/2009)
06/18/2009	<u>6</u>	MOTION to Dismiss <u>1</u> Complaint by F Cary Fitch, filed. Motion Docket Date 7/8/2009. (Attachments: # <u>1</u> Errata Certificate of Service, # <u>2</u> Proposed Order)(Potter, Allan) (Entered: 06/18/2009)
06/25/2009	<u>7</u>	ORDER granting <u>4</u> Motion to Appear Pro Hac Vice.(Signed by Judge Nancy F. Atlas) Parties notified.(sashabranner,) (Entered: 06/25/2009)
06/30/2009	<u>8</u>	RETURN of Service of SUMMONS Executed as to F Cary Fitch served on 5/29/2009, answer due 6/18/2009, filed.(Whitley, Timothy) (Entered: 06/30/2009)
07/07/2009	<u>9</u>	RESPONSE to <u>6</u> MOTION to Dismiss <u>1</u> Complaint, filed by Southwestern Bell Telephone Company. (Whitley, Timothy) (Entered: 07/07/2009)
08/05/2009	<u>10</u>	MEMORANDUM AND ORDER DENIED <u>6</u> MOTION to Dismiss <u>1</u> Complaint.(Signed by Judge Nancy F. Atlas) Parties notified. (sashabranner,) (Entered: 08/05/2009)
08/13/2009	<u>11</u>	LETTER OF AGREEMENT by F Cary Fitch, filed.(Whitley, Timothy)

		(Entered: 08/13/2009)
08/19/2009	12	ORDER GRANTED 11 Letter of Agreement.The Court has received Defendants letter dated August 13, 2009 [Doc. # 11]. It is herebyORDERED that the parties are permitted fulfill their Rule 26(f) meet and confer obligations via telephonic and electronic communications.(Signed by Judge Nancy F. Atlas) Parties notified. (sashabranner,) (Entered: 08/19/2009)
08/20/2009	13	JOINT DISCOVERY/CASE MANAGEMENT PLAN by Southwestern Bell Telephone Company, F Cary Fitch, filed.(Whitley, Timothy) (Entered: 08/20/2009)
08/20/2009	14	Agreed PROPOSED ORDER <i>Scheduling and Docket Control</i> , filed. (Whitley, Timothy) (Entered: 08/20/2009)
08/21/2009	15	NOTICE of Resetting. Parties notified. Initial Conference set for 8/26/2009 at 10:00 AM in Courtroom 9F before Judge Nancy F. Atlas, filed. (sashabranner,) (Entered: 08/21/2009)
08/26/2009	16	CERTIFICATE OF INTERESTED PARTIES by F Cary Fitch, filed. (McCollough, W) (Entered: 08/26/2009)
08/26/2009	17	MINUTE ENTRY ORDER: Pretrial Confererence held. Docket control order to follow. Appearances: W Scott McCollough, Timothy A Whitley. Ct Reporter: ERO. (Signed by Judge Nancy F. Atlas) Parties notified.(kmurphy,) (Entered: 08/28/2009)
08/26/2009	18	SCHEDULING ORDER. Jury. Joinder of Parties due by 1/4/2010; Amended Pleadings due by 3/29/2010; Pltf Expert Report due by 4/26/2010; Deft Expert Report due by 5/24/2010; Discovery due by 7/19/2010; Required Mediation due by 3/31/2009; Dispositive Motion Filing due by 8/23/2010; Non-Dispositive Motion Filing due by 8/23/2010; Joint Pretrial Order due by 11/30/2010; Docket Call set for 12/8/2010 at 04:00 PM in Courtroom 9F before Judge Nancy F. Atlas. (Signed by Judge Nancy F. Atlas) Parties notified.(kmurphy,) (Entered: 08/28/2009)
08/31/2009	19	ANSWER to 1 Complaint with Jury Demand, COUNTERCLAIM against Southwestern Bell Telephone Company by F Cary Fitch, filed. (McCollough, W) (Entered: 08/31/2009)
09/10/2009	20	Unopposed MOTION for Extension of Time To Answer Counterclaim by Southwestern Bell Telephone Company, filed. Motion Docket Date 10/5/2009. (Attachments: # 1 Proposed Order)(Whitley, Timothy) (Entered: 09/10/2009)
09/11/2009	21	ORDER granting 20 Motion for Extension of Time Answer due by 10/5/2009.(Signed by Judge Nancy F. Atlas) Parties notified. (sashabranner,) (Entered: 09/11/2009)
10/05/2009	22	ANSWER to 19 Answer to Complaint, Counterclaim with Jury by Southwestern Bell Telephone Company, filed.(Whitley, Timothy) (Entered: 10/05/2009)

10/30/2009	<u>23</u>	INITIAL DISCLOSURES by Southwestern Bell Telephone Company, filed.(Whitley, Timothy) (Entered: 10/30/2009)
10/30/2009	<u>24</u>	INITIAL DISCLOSURES by F Cary Fitch, filed.(McCollough, W) (Entered: 10/30/2009)
01/22/2010	<u>25</u>	Agreed MOTION for Continuance by Southwestern Bell Telephone Company, filed. Motion Docket Date 2/12/2010. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Proposed Order)(McCarty, Sunny) (Entered: 01/22/2010)
01/25/2010	<u>26</u>	ORDER GRANTED <u>25</u> Agreed MOTION for Continuance (Agreed Mediator due by 1/28/2010, Deft Expert Report due by 8/23/2010, Discovery due by 10/18/2010, Dispositive Motion Filing due by 11/22/2010, Joint Pretrial Order due by 2/28/2011, Mediation due by 1/29/2010, Pltf Expert Report due by 7/26/2010, Docket Call set for 3/10/2011 at 04:00 PM in Courtroom 9F before Judge Nancy F. Atlas). (Signed by Judge Nancy F. Atlas) Parties notified.(sashabranner,) (Entered: 01/25/2010)
01/28/2010	<u>27</u>	Joint MOTION for Protective Order by Southwestern Bell Telephone Company, filed. Motion Docket Date 2/18/2010. (Attachments: # <u>1</u> Proposed Order)(Whitley, Timothy) (Entered: 01/28/2010)
01/29/2010	<u>28</u>	PROTECTIVE ORDER granting <u>27</u> Joint MOTION for Protective Order.(Signed by Judge Nancy F. Atlas) Parties notified. (sashabranner,) (Entered: 01/29/2010)
07/15/2010	<u>29</u>	Agreed MOTION to Modify as to <u>26</u> Order, by Southwestern Bell Telephone Company, filed. Motion Docket Date 8/5/2010. (Attachments: # <u>1</u> Proposed Order Amended)(McCarty, Sunny) (Entered: 07/15/2010)
07/19/2010	<u>30</u>	SCHEDULING ORDER. Amended Pleadings due by 9/28/2010 Pltf Expert Witness List due by 10/26/2010 Deft Expert Witness List due by 11/26/2010 Discovery due by 1/18/2011 Mediation due by 10/22/2010 Dispositive Motion Filing due by 2/22/2011 Joint Pretrial Order due by 5/11/2011 Docket Call set for 5/16/2011 at 04:00 PM in Courtroom 9F before Judge Nancy F. Atlas. If all Discovery Disputes are not Resolved by July 26, 2010, the parties are to contact the Court and set a Conference. (Signed by Judge Nancy F. Atlas) Parties notified. (jewilliams,) (Entered: 07/19/2010)
12/20/2010	<u>31</u>	Amended INITIAL DISCLOSURES by Southwestern Bell Telephone Company, filed.(McCarty, Sunny) (Entered: 12/20/2010)
12/29/2010	<u>32</u>	Second INITIAL DISCLOSURES by Southwestern Bell Telephone Company, filed.(McCarty, Sunny) (Entered: 12/29/2010)
01/05/2011	<u>33</u>	NOTICE to Take Deposition of Courtney Spears, of GVNW Consulting, Inc. by Southwestern Bell Telephone Company, filed. (Attachments: # <u>1</u> Affidavit Proof of Service)(McCarty, Sunny) (Entered: 01/05/2011)

01/05/2011	34	NOTICE of Appearance by Mary A. Keeney on behalf of Southwestern Bell Telephone Company, filed. (Keeney, Mary) (Entered: 01/05/2011)
01/12/2011	35	NOTICE to Take Deposition of Courtney Spears, of GVNW Consulting, Inc. by Southwestern Bell Telephone Company, filed. (McCarty, Sunny) (Entered: 01/12/2011)
01/14/2011	36	Agreed MOTION for Extension of Time Discovery Deadline Two Days by Southwestern Bell Telephone Company, filed. Motion Docket Date 2/4/2011. (Attachments: # 1 Proposed Order)(McCarty, Sunny) (Entered: 01/14/2011)
01/18/2011	37	ORDER granting 36 Motion for Extension of Time Discovery due by 1/20/2011..(Signed by Judge Nancy F. Atlas) Parties notified. (sashabranner,) (Entered: 01/18/2011)
01/18/2011	38	Amended INITIAL DISCLOSURES by Southwestern Bell Telephone Company, filed.(McCarty, Sunny) (Entered: 01/18/2011)
01/20/2011	39	Amended INITIAL DISCLOSURES by Southwestern Bell Telephone Company, filed.(McCarty, Sunny) (Entered: 01/20/2011)
02/16/2011	40	Agreed MOTION for Extension of Time Dispositive Motions Deadline One Week by Southwestern Bell Telephone Company, filed. Motion Docket Date 3/9/2011. (Attachments: # 1 Proposed Order)(McCarty, Sunny) (Entered: 02/16/2011)
02/17/2011	41	ORDER granting 40 Motion for Extension of Time Dispositive Motion Filing due by 3/1/2011. Responses due by 3/22/2011 Replies due by 4/4/2011.(Signed by Judge Nancy F. Atlas) Parties notified. (sashabranner,) (Entered: 02/17/2011)
03/01/2011	42	MOTION for Summary Judgment by Southwestern Bell Telephone Company, filed. Motion Docket Date 3/22/2011. (Attachments: # 1 Appendix of Relevant Authorities, # 2 Exhibit A Part 1, # 3 Exhibit A Part 2, # 4 Exhibit A Part 3 thru Exhibit B, # 5 Exhibit C Part 1, # 6 Exhibit C Part 2 thru Exhibit E, # 7 Exhibit F, # 8 Exhibit G Part 1, # 9 Exhibit G Part 2, # 10 Exhibit H, # 11 Exhibit I thru Exhibit P, # 12 Exhibit Q thru Exhibit T)(Keeney, Mary) (Entered: 03/01/2011)
03/01/2011	43	MOTION for Partial Summary Judgment by F Cary Fitch, filed. Motion Docket Date 3/22/2011. (Attachments: # 1 Affidavit Fitch MSJ Declaration, # 2 Exhibit Exhibits Part 1, # 3 Exhibit Exhibits Part 2, # 4 Exhibit Exhibits Part 3, # 5 Exhibit Exhibits Part 4, # 6 Exhibit Exhibits Part 5, # 7 Exhibit Exhibits Part 6, # 8 Exhibit Exhibits Part 7, # 9 Exhibit Exhibits Part 8, # 10 Appendix FCC Rules Appendix, # 11 Appendix FCC Decisions Appendix Part 2, # 12 Appendix FCC Decisions Appendix Part 2, # 13 Appendix FCC Decisions Appendix Part 3, # 14 Appendix FCC Decisions Appendix Part 4, # 15 Appendix FCC Decisions Appendix Part 5, # 16 Appendix FCC Decisions Appendix Part 6, # 17 Appendix FCC Decisions Appendix Part 7) (McCollough, W) (Entered: 03/01/2011)

03/22/2011	44	RESPONSE to 43 MOTION for Partial Summary Judgment filed by Southwestern Bell Telephone Company. (Attachments: # 1 Exhibit U, # 2 Exhibit V, # 3 Exhibit W, # 4 Exhibit X)(Keeney, Mary) (Entered: 03/22/2011)
03/22/2011	45	RESPONSE in Opposition to 42 MOTION for Summary Judgment, filed by F Cary Fitch. (Attachments: # 1 Affidavit Fitch Second Declaration, # 2 Exhibit Exhibits Part 1, # 3 Exhibit Exhibits Part 2, # 4 Exhibit Exhibits Part 3, # 5 Exhibit Exhibits Part 4, # 6 Exhibit Exhibits Part 5, # 7 Exhibit Exhibits Part 6, # 8 Exhibit Exhibits Part 7, # 9 Appendix FCC Rules and Decisions)(McCollough, W) (Entered: 03/22/2011)
04/04/2011	46	REPLY to Response to 43 MOTION for Partial Summary Judgment, filed by Southwestern Bell Telephone Company. (Attachments: # 1 Exhibit Y, # 2 Exhibit Z, # 3 Exhibit AA, # 4 Exhibit BB, # 5 Exhibit CC, # 6 Exhibit DD, # 7 Exhibit EE, # 8 Exhibit FF, # 9 Exhibit GG) (Keeney, Mary) (Entered: 04/04/2011)
04/04/2011	47	REPLY in Support of 43 MOTION for Partial Summary Judgment, filed by F Cary Fitch. (McCollough, W) (Entered: 04/04/2011)
04/06/2011	48	DECLARATION of Mary A. Keeney re: 46 Reply to Response to Motion,, filed.(Keeney, Mary) (Entered: 04/06/2011)
04/13/2011	49	MOTION to Exclude AT&T Reply to Response to MPSJ (part) (Doc. 46) by F Cary Fitch, filed. Motion Docket Date 5/4/2011. (McCollough, W) (Entered: 04/13/2011)
04/20/2011	50	RESPONSE to 49 MOTION to Exclude AT&T Reply to Response to MPSJ (part) (Doc. 46) filed by Southwestern Bell Telephone Company. (Attachments: # 1 Proposed Order)(Keeney, Mary) (Entered: 04/20/2011)
04/21/2011	51	NOTICE of Appearance by Paul A. Drummond on behalf of Southwestern Bell Telephone Company, filed. (McCarty, Sunny) (Entered: 04/21/2011)
05/03/2011	52	NOTICE of Appearance by Richard D. Yeomans on behalf of Southwestern Bell Telephone Company, filed. (McCarty, Sunny) (Entered: 05/03/2011)
05/05/2011	53	ORDER Pending before the Court is Plaintiffs Motion for Summary Judgment [Doc. # 42] and Defendants Motion for Partial Summary Judgment [Doc. # 43]. Due to the complex and technical nature of the regulatory framework and factual arguments asserted by the parties, oral argument is necessary. Accordingly, it is herebyORDERED that the parties shall appear for oral argument on these motions on May 18, 2011, at 10:00 a.m. in Courtroom 9F of the U.S. Courthouse at 515 Rusk, Houston, Texas. It is furtherORDERED that on May 17, 2011, by 5:00 p.m., the parties shall provide the Court with a joint glossary of all technical terminology relevant to this case. This glossary shall include the term, its definition, and the source of that definition. It is

		further ORDERED that the Docket Call and Joint Pretrial Order deadlines previously established in this case are VACATED. Motion Hearing set for 5/18/2011 at 10:00 AM in Courtroom 9F before Judge Nancy F. Atlas. (Signed by Judge Nancy F. Atlas) Parties notified. (sashabrunner,) (Entered: 05/05/2011)
05/06/2011	54	AO 435 TRANSCRIPT ORDER FORM by W Scott McCullough. This is to order a transcript of Hearing held on 8/26/2009 before Judge Nancy F. Atlas (Original). Deposit amount \$100.00. Court Reporter/Transcriber: Judicial Transcribers of Texas, filed. (dclark,) Modified on 5/6/2011 (dclark,). Electronically forwarded to Judicial Transcribers of Texas. (Entered: 05/06/2011)
05/09/2011	55	AO 435 TRANSCRIPT ORDER FORM by Sunny McCarty. This is to order a transcript of Hearing held on 8/26/2009 before Judge Nancy F. Atlas (Copy). Court Reporter/Transcriber: Judicial Transcribers of Texas, filed. (dclark,) Modified on 5/9/2011 (dclark,). Electronically forwarded to Judicial Transcribers of Texas. (Entered: 05/09/2011)
05/13/2011	56	TRANSCRIPT re: Initial Conference held on August 26, 2009 before Judge Nancy F. Atlas. Court Reporter/Transcriber Judicial Transcribers of Texas, Inc. Release of Transcript Restriction set for 8/11/2011., filed. (mahenry,) (Entered: 05/13/2011)
05/16/2011	57	Notice of Filing of Official Transcript as to 56 Transcript. Party notified, filed. (dclark,) (Entered: 05/16/2011)
05/17/2011	58	<i>Joint Glossary of All Technical Terminology</i> by Southwestern Bell Telephone Company, filed. (Keeney, Mary) (Entered: 05/17/2011)
05/18/2011	59	MINUTE ENTRY ORDER: Motion hearing held Appearances: W Scott McCollough, Mary Ann Keeney, Sunny Caroline McCarty. Ct Reporter: ERO.. Oral argument heard. Court did not make definitive rulings, Motions to dismiss are pending. (Signed by Judge Nancy F. Atlas) Parties notified. (sashabrunner,) (Entered: 05/20/2011)
06/07/2011	60	AO 435 TRANSCRIPT ORDER FORM by Defendant. This is to order a transcript of Motion Hearing held on 5/18/2011 before Judge Nancy F. Atlas (original). Court Reporter/Transcriber: Judicial Transcribers of Texas, filed. (pyeburnetsky,) Modified on 6/7/2011 (dclark,). Electronically forwarded to Judicial Transcribers of Texas. (Entered: 06/07/2011)
06/07/2011	61	AO 435 TRANSCRIPT ORDER FORM by Sunny McCarty. This is to order a transcript of Hearing held on 5/18/2011 before Judge Nancy F. Atlas (copy). Court Reporter/Transcriber: JTT, filed. (mmapps,) Modified on 6/8/2011 (dclark,). Copy order electronically forwarded to JTT. (Entered: 06/08/2011)
06/16/2011	62	TRANSCRIPT re: Motions for Summary Judgment held on May 18, 2011 before Judge Nancy F. Atlas. Court Reporter/Transcriber Judicial Transcribers of Texas, Inc. Release of Transcript Restriction set for 9/14/2011., filed. (mahenry,) (Entered: 06/16/2011)

06/17/2011	63	Notice of Filing of Official Transcript as to 62 Transcript. Party notified, filed. (dclark,) (Entered: 06/17/2011)
06/23/2011	64	MOTION for Leave to File Supplemental Pleading Under Rule 15(d) by Southwestern Bell Telephone Company, filed. Motion Docket Date 7/14/2011. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Proposed Order)(Keeney, Mary) (Entered: 06/23/2011)
06/23/2011	65	ORDER The Court has received Plaintiff AT&T Texass Motion for Leave to File Supplemental Pleading Under Rule 15(d) [Doc. # 64]. It is hereby ORDERED that any opposition to this motion must be filed by July 7, 2011. Any replies must be filed by July 13, 2011. Responses due by 7/7/2011 Replies due by 7/13/2011.(Signed by Judge Nancy F. Atlas) Parties notified.(sashabranner,) (Entered: 06/23/2011)
06/29/2011	66	AO 435 TRANSCRIPT ORDER FORM by Frank Korfel. This is to order a transcript of motion hearing held on 5/18/2011 before Judge Nancy F. Atlas (copy). Court Reporter/Transcriber: Judicial Transcribers of Texas Inc, filed. (Itien,) Modified on 6/30/2011 (dclark,). Electronically forwarded to Judicial Transcribers of Texas. (Entered: 06/29/2011)
07/07/2011	67	RESPONSE in Opposition to 64 MOTION for Leave to File Supplemental Pleading Under Rule 15(d), filed by F Cary Fitch. (Attachments: # 1 Proposed Order)(McCollough, W) (Entered: 07/07/2011)
07/13/2011	68	REPLY to Response to 64 MOTION for Leave to File Supplemental Pleading Under Rule 15(d), filed by Southwestern Bell Telephone Company. (Keeney, Mary) (Entered: 07/13/2011)
07/22/2011	69	MEMORANDUM AND ORDER granting in part and denying in part 42 AT&T Texas's Motion for Summary Judgment; denying 43 Affordable's Motion for Partial Summary Judgment; granting in part and denying in part 49 Affordable's Motion to Exclude; and granting 64 AT&T Texas's Motion to Supplement. Parties shall appear for a conference on 7/28/11 at 10:15 a.m. in Courtroom 9F.(Signed by Judge Nancy F. Atlas) Parties notified.(TDR) (Entered: 07/22/2011)
07/22/2011		***Set/Reset Hearings: Miscellaneous Conference set for 7/28/2011 at 10:15 AM at Courtroom 9F before Judge Nancy F. Atlas (TDR) (Entered: 07/22/2011)
07/22/2011	72	MINUTE ENTRY ORDER: Status conference held Appearances: Mary Keeney/Sunny McCarty/Paul Drummond for Plaintiff, Scott McCollough (by telephone) for Defendant. Ct Reporter: ERO..AT&T agrees to withdraw supplement to complaint without prejudice. Parties clarifiedpoints of settlement on open claims.Parties to submit a proposed final judgment no later then 5:00 p.m. on July 29, 2011. (Signed by Judge Nancy F. Atlas) Parties notified.(sashabranner,) (Entered: 07/29/2011)
07/27/2011	70	DECLARATION of Heather D. Lenhart, filed.(McCarty, Sunny)

		(Entered: 07/27/2011)
07/28/2011	71	NOTICE OF WITHDRAWAL OF SUPPLMENTAL COMPLAINT WITHOUT PREJUDICE by Southwestern Bell Telephone Company, filed. (McCarty, Sunny) (Entered: 07/28/2011)
07/29/2011	73	Proposed Form of Final Judgment by F Cary Fitch, filed.(McCollough, W) (Entered: 07/29/2011)
07/29/2011	74	PROPOSED ORDER <i>Final Judgment</i> , filed.(McCarty, Sunny) (Entered: 07/29/2011)
07/29/2011	75	FINAL JUDGMENT in favor of Plaintiff and against Defendant. Case terminated on 7/29/2011.(Signed by Judge Nancy F. Atlas) Parties notified.(arrivera,) (Entered: 07/29/2011)
08/11/2011	76	MOTION for Attorney Fees by Southwestern Bell Telephone Company, filed. Motion Docket Date 9/1/2011. (Attachments: # 1 Exhibit A, # 2 Proposed Order)(Keeney, Mary) (Entered: 08/11/2011)
08/15/2011	77	ORDER granting 76 Motion for Attorney Fees.(Signed by Judge Nancy F. Atlas) Parties notified.(sashabranner,) (Entered: 08/15/2011)
08/24/2011	78	NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re: 75 Final Judgment by F Cary Fitch (Filing fee \$ 455, receipt number 0541-8501130), filed.(McCollough, W) (Entered: 08/24/2011)